THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No. 6236 of 2004

Dated: 13.09.2006

Between:

Kollareddy Venu Gopala Swamy Reddy, S/o late K. Ch. Narayana Reddy, R/o Utkoor village, Luxettipet Mandal, Adilabad District.

.... PETITIONER

AND

Mancherial Municipality, rep. by its Commissioner, Mancherial, Adilabad District and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No. 6236 of 2004

ORDER:

1. Heard Sri P. Srinivas, learned counsel representing the writ petitioner, Sri P. Radha Krishna, learned Standing Counsel representing the 1st respondent-Municipality, and the learned Government Pleader for Municipal Administration and Urban Development, representing the respondents 2 to 4.

2. Sri P. Srinivas, learned counsel representing the writ petitioner had taken this Court through the respective stands taken by the parties and would contend that in the facts and circumstances of the case the impugned order cannot be sustained. The learned counsel also pointed out to an order passed by this Court in Writ Petition No. 8891 of 2001 and would contend that in the light of the stand taken by the 1st respondent-Municipality in the said writ petition, contrary stand cannot be taken in the present writ petition. The learned counsel also would submit that unnecessarily the writ petitioner was driven to unconcerned authorities and because of certain orders made in this regard, the writ petitioner is landed into the present situation. The learned counsel also would maintain that in the light of the facts and circumstances, the petitioner is prepared to specifically show his land on ground for the purpose of satisfying the Commissioner, Mancherial Municipality or his Staff, and on being satisfied, let the 1st respondent-Municipality to consider the granting of building permission to the petitioner in accordance with law.

3. Sri P. Radha Krishna, learned Standing Counsel representing the

1st respondent-Municipality would contend that in the light of the stand taken by the respondents 2, 3 and 4 in the counter affidavit, the 1st respondent-Municipality has only limited say in the matter. The learned counsel also would contend that in the light of the facts and circumstances, if the petitioner is able to demarcate the land on ground in presence of the concerned officers of the 1st respondent-Municipality, and on being satisfied the 1st respondent-Municipality has no objection to consider the application of the petitioner to accord building permission in accordance with law.

4. The learned Government Pleader for Municipal Administration and Urban Development, representing the respondents 2 to 4, had taken this Court through the averments made in paragraph 4 of the counter affidavit and would submit that in the light of the same unless the impugned order is complied with in letter and spirit, nothing further can be done in the matter.

5. The writ petition is filed for a Writ of Mandamus or any other writ or order as this Court deems fit and proper in the circumstances declaring the orders of the 4th respondent, vide Endt. No.60/2003/WRO/W3, dated 28.01.2004, as void being arbitrary and illegal in the interest of justice, as otherwise the petitioner will be put to irreparable loss and injury, and consequently to direct the respondents to determine the location of the plots, as per sanctioned layout in the Survey Nos.208 and 209 that are already demarcated by the Mandal Surveyor.

6. The order impugned aforesaid dated 28.01.2004 reads as hereunder:

"GOVERNMENT OF ANDHRA PRADESH

Office of the
Regional Deputy Director of
Town and Country Planning,
Warangal.

ENDORSEMENT

Endt.No.60/2003/WRO/W3, Dated: 28.01.2004.

Sub: Warangal Region – Mancherial Municipality – W.P. No. 8891/2001 of A.P. High Court – Director of Town and Country Planning, A.P., Hyderabad made respondent No.2 by Sri K. Venugopal Swamy Reddy, Mancherial – Reg.

Ref: 1. Lr.Roc.No.512/G1/2003, dt.10.08.2003 of the Commissioner, Mancherial Municipality addressed to this office and copy to you.
2. Your representation dt. 26.09.2003 received on 19.01.2004.

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With reference to your letter 2nd cited, I request you to demarcate the land on ground with in a week and intimate to the Municipal Commissioner, Mancherial with a copy to this office. Otherwise, the same intimation will be informed to the Honourable High Court of A.P., Hyderabad through Assistant Government Pleader for taking further action in the matter.

Sd/-
Regional Deputy Director of
Town and Country Planning,
Warangal."

7. It is stated by the writ petitioner that he is the owner and possessor of housing plot Nos. 28 and 29 admeasuring 1050 square yards in the sanctioned layout plan of Mancherial Municipality comprising in Survey Nos.208 and 209 of Mancherial Town, having purchased the same from its original owner by virtue of a registered sale deed. It is also stated that the petitioner applied for building permit with the 1st respondent and the same was refused on the ground that the plots are falling on the master plan road of 80 feet width. It is stated that aggrieved by the same, the petitioner filed Writ Petition No. 8891 of 2001. The said writ petition was allowed on 23rd day of October 2002. The relevant portion of the said order is as hereunder:

> "Though several contentions are raised in the writ petition for the simple reason, in the counter filed by the 1st respondent-Municipality it is categorically admitted that plot Nos.28 and 29 in Sy.Nos.208 and 209 where the petitioner applied for

permission are on the northern side of the 80' master plan road but not on the place shown in the proposed place of construction. It is also averred that on verification from the 1969 site plan, the said plots are situated in Sy.Nos.208 and 209 showing 10' land on the southern side and also other plots. The Plot Nos. 32, 33, 34 and 35 have been covered in the 80' master plan road, thus the 80' master plan road is on the southern side of the petitioner's plots.

In view of the stand taken by the Municipality in the counter the impugned notice is total non-application of mind to the facts of the case. Therefore, the impugned order is liable to be set aside and it is accordingly set aside and the matter is remitted to the 1st respondent-Municipality to consider the application of the petitioner and dispose of the same within a period of three weeks from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. No costs."

It is also stated that in pursuance of the order referred to supra, the petitioner made an application on 09.12.2002 to the 1st respondent, and the 1st respondent addressed a letter directing the petitioner to get the land demarcated by the Assistant Director, Survey, Settlements and Land Records, Adilabad, vide letter dated 10.12.2002. The petitioner made an application to the Assistant Director, Survey, Settlements and Land Records, Adilabad, for demarcation of the land, vide application, dated 05.02.2003, and the Assistant Director, Survey, Settlements and Land Records, Adilabad, directed the petitioner to apply for demarcation by the Mandal Revenue Officer, vide letter endorsement, dated 07.02.2003. It is also stated that the petitioner made another application to the Mandal Revenue Officer, Mancherial for demarcation of his plots bearing Nos. 28 and 29 in the layout comprised in Survey Nos.208 and 209 of Mancherial Town, vide application, dated 25.02.2003. It is also stated that the Mandal Revenue Officer issued a notice, dated 19.08.2003, fixing the date of demarcation on 21.08.2003. The demarcation was duly completed on 21.08.2003 and a Panchanama Certificate along with plan was issued on 23.09.2003. It is also stated that on 26.09.2003 the petitioner made a fresh application to the 1st

respondent to consider his building plan and release the same enabling him to proceed with the construction. But to his utter surprise, the 1st respondent addressed a letter, dated 10.08.2003, to the 4th respondent, marking copy of the same to the petitioner. Again the petitioner received a letter, dated 28.01.2004, from the 4th respondent demanding him to demarcate the land on ground within a week and intimate to the Municipal Commissioner, Mancherial. It is also stated that the respondents ought to have identified the plots as per the sanctioned layout in Survey Nos.208 and 209, the boundaries of which were already demarcated by the Mandal Surveyor, and consequently sanctioned the building plan. Instead, the respondents are giving notices to the petitioner seeking him to demarcate the land again and again. The same is abuse of power and only with an intention to harass the petitioner and the action of the respondents is violative of Articles 14 and 300-A of the Constitution of India.

8. No counter affidavit is filed by the 1st respondent-Municipality.

9. The respondents 2, 3 and 4 filed counter affidavit. It was pleaded in paragraph 2 of the counter affidavit that the petitioner has to prove that he is the owner and possessor of plot Nos. 28 and 29 admeasuring 1050 square yards in the sanctioned layout plan of Mancherial Municipality comprised in Survey Nos. 208 and 209 of Mancherial Town. During the site inspection by the 4th respondent, it was noticed that there are R.C.C. buildings and tiled house existed in Survey Nos. 208 and 209 of Mancherial Town. In that connection, a letter vide No.60/2003/WRO/W, dated 21.07.2003 was addressed by the 4th respondent to the

1st respondent to submit remarks regarding constructions made in Survey Nos. 208 and 209. It was also further pleaded in paragraph 3 of the counter affidavit that the 1st respondent in letter Roc. No. 512/G1/2003, dated 01.08.2003 has informed that the petitioner was not

turned up for demarcation of plots, as such, according permission is pending and could not issue permission, as per the directions of the Hon'ble High Court orders in W.P. No. 8891 of 2001. In this connection, the 4th respondent has addressed a letter to the petitioner in Roc. No. 60/2003/WRO/W, dated 28.01.2004, requesting him to demarcate the land on ground within a week and intimate to the 1st respondent. It was also further pleaded in paragraph 4 of the counter affidavit that the petitioner has marked a copy to the 4th respondent's office while addressing to the 1st respondent seeking building permission as per the Hon'ble High Court orders. He has also enclosed a copy of the Panchanama conducted by the Mandal Surveyor, Mancherial. In the Panchanama, it is stated that the boundaries of Survey Nos. 208 and 209 are demarcated for fixing the boundary stones. It is also informed in the Panchanama that there exist residential houses and some open plots in Survey Nos. 208 and 209. Further it is also stated that as per the sketch plan at the time of registration, the extent of Plot Nos. 28 and 29 is 1166 square yards and these plots are affecting in the municipal road. Further, it is stated that the sketch layout, which plot Nos. 28 and 29 consist, is not the authorized layout and the documents are also prior to the sanction of the layout L.P. No.24/75. Further specific stand was taken that the petitioner has to demarcate his plot Nos. 28 and 29 as per his registered documents on the ground physically, and unless the plot boundary stones are fixed, it is difficult to locate the plots, as it is observed, there are pucca residential houses existing on either side of 80' master plan road.

10. It is true that in the prior Writ Petition No. 8891 of 2001, the 1st respondent-Municipality had taken a specific stand, but subsequent thereto much water had flown. As can be seen from the impugned order, dated 28.01.2004, the petitioner was requested to demarcate the land on ground within a week and intimate to the Municipal Commissioner, Mancherial. It was also stated therein that otherwise, the same

intimation would be informed to the High Court of A.P., Hyderabad, through the Assistant Government Pleader for taking further action in the matter. The same was communicated to the writ petitioner and a copy of the same was also communicated to the Municipal Commissioner, Mancherial, with a request to inform the stage of action. It is no doubt true that when the 1st respondent-Municipality categorically admitted in W.P. No. 8891 of 2001 that plot Nos. 28 and 29 in Survey Nos. 208 and 209 on which the petitioner sought permission for construction are on the northern side of 80' master plan road and not on the place shown in the proposed place of construction, it cannot be allowed to take a contrary stand in the present writ petition. This Court is not inclined to express any further opinion, since this is a matter concerned with the exact location by demarcation of the plots in question.

11. In the light of the stand taken by the 1st respondent-Municipality in Writ Petition No. 8891 of 2001 and also in the light of the stand taken by the respondents 2 to 4 in the counter affidavit filed in the present writ petition and what had been specified in the impugned endorsement, dated 28.01.2004, this Court is of the considered opinion that it would be just and proper to dispose of the writ petition with the following directions.

12. The writ petitioner shall demarcate the plots referred to supra in the immediate presence of either the Commissioner of the 1st respondent-Municipality or the Staff, who may be deputed by the 1st respondent-Municipality in this regard and also in the presence of the Mandal Revenue Officer, Mancherial, and on such demarcation, if the 1st respondent-Municipality is otherwise satisfied with the other requirements, to be fulfilled by the petitioner, the application of the petitioner for building permission in relation to the plots in question shall be considered in accordance with law at the earliest point of time after such demarcation. It is needless to say that the demarcation also should

be completed at an early date. The petitioner is at liberty to put the 1st respondent-Municipality and also the Mandal Revenue Officer, Mancherial, on notice for the purpose of carrying out the directions of this Court referred to supra.

13. The writ petition is accordingly disposed of. No order as to costs.

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P.S. NARAYANA, J.

Date: 13.09.2006
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